

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-47927

JOSEPH SMITH,

Chapter 13

Debtor.

Judge Thomas J. Tucker

**ORDER STRIKING THE PURPORTED DEBTOR'S RESPONSE
TO THE CHAPTER 13 TRUSTEE'S MOTION TO DISMISS**

This case is before the Court on the Chapter 13 Trustee's motion, filed August 19, 2014, entitled "Trustee's Motion to Dismiss for Failure to Remit Tax Refunds to the Chapter 13 Trustee and Due to Plan Expiration" (Docket # 36, the "Motion"). On September 10, 2014, Debtor's former attorney of record filed a response to the Motion, purportedly on behalf of Debtor (Docket # 39, the "Response").

The Response must be stricken because the Response does not show that it was filed by anyone with standing to file it. The Court is informed that the Debtor died on February 27, 2013,¹ which is long before the Response was filed, so Debtor's attorney of record had no authority to file the Response on behalf of the Debtor. Only a personal representative duly appointed by the probate court under the laws of the State of Michigan may file a response to a motion, as the successor in interest to a deceased debtor. *Cf.* Mich. Comp. Laws Ann. § 700.3103 (stating, in relevant part, that "[e]xcept as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a decedent's personal representative, a person must be appointed by the register or by court order, must qualify, and must be issued letters"); Mich. Comp. Laws Ann. § 700.3703(3)(stating that "[e]xcept as to a proceeding that

¹ See Docket # 37 at ¶ 5.

does not survive the decedent's death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death”); *In re Hamilton*, 274 B.R. 266, 267 (W.D. Tex. 2001) (citing *In re Lucio*, 251 B.R. 705, 708-09 (Bankr. W.D. Tex. 2000)) (“[W]hen a debtor dies, the only person who can then appear on the debtor’s behalf is the person so named as the official representative of the probate estate of the debtor.”)

Accordingly,

IT IS ORDERED that the Response (Docket # 39), is stricken.

Signed on September 12, 2014

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge